Washington - Congresswoman Linda Sánchez, Chairwoman of the House Judiciary Subcommittee on Commercial and Administrative Law, issued the following statement as part of the subcommittee's oversight hearing into the fairness of mandatory arbitration agreements in consumer contracts. Chairwoman Sánchez called the hearing to evaluate how companies may be using the Federal Arbitration Act of 1925 to establish systems where consumers have very limited recourse in cases like cell phone or credit card disputes.

"In 1925, Congress passed the Federal Arbitration Act to free up the courts from an increasingly heavy docket and to place arbitration agreements on the same footing as contracts. At the time, Congress found several benefits to arbitration including lower costs than litigating in the courts, a choice of neutral arbitrators with expertise in the disputed area of law, and a quicker resolution to the dispute.

"However, the use of arbitration has expanded from simply involving disputes between commercial parties to issues between consumers and businesses, employees and employers, and shareholders and corporations. This once rare alternative to litigation has become commonplace, and arbitration clauses are now frequently included in legal contracts of every variety.

"As arbitration has increased in popularity, what was once a choice has become a mandatory part of consumer contracts. In fact, according to a 2004 survey, one-third of all our major consumer transactions are covered by mandatory arbitration clauses. And despite all of the benefits of arbitration, mandatory arbitration agreements may not always be in the best interests of consumers.

"Mandatory or binding arbitration clauses in agreements may require consumers to pay fees to arbitrate a claim or travel several states away for complaint proceedings. Advocates also have shown that businesses often fare better than consumers in arbitration matters. In one instance, it was reported that a bank won an astonishing 99.6% of the almost 20,000 arbitration cases in which it participated. Besides the advantage for "regular customers" in the arbitration game, there are real questions about due process and the non-public nature of arbitration decisions.

"Considering that the Federal Arbitration Act was created only to cover businesses in equal bargaining positions, we have to wonder how today's current use of arbitration agreements comport with the legislative history and the spirit of the Act. Congress must now carefully consider whether arbitration is fair for all of the parties to a dispute.

"Today's oversight hearing will provide an opportunity to learn more about the effect of arbitration on consumers and whether mandatory binding arbitration clauses are an equitable use of the arbitration process.

"First, we must review the history of arbitration and the reasons that Congress codified it. Second, we must understand how the use of arbitration has evolved since 1925, and how it came to be used in the consumer-business context of today. Finally, we must decide how best to ensure that the benefits of arbitration are maintained while addressing its negative aspects. It

is also important to note that several bills regarding arbitration agreements have been introduced.

"To help us learn more about mandatory binding arbitration agreements, we have four witnesses with us this afternoon. We are pleased to have F. Paul Bland, Jr., an attorney at Trial Lawyers for Public Justice; Jordan Fogal, an author and a consumer advocate; Mark Levin, a partner at Ballard Spahr Andrews & Ingersoll; and David S. Schwartz, a professor at the University of Wisconsin Law School."